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MAR 13

In Equity, No. .

In the District Court of the United States for the Northern District of Illinois.

UNITED STATES OF AMERICA, PETITIONER,

v.

BOARD OF TRADE OF THE CITY OF CHICAGO, AND OTHERS.

PETITION IN EQUITY.

JAMES H. WILKERSON,
United States Attorney,
Northern District of Illinois.

GEORGE W. WICKERSHAM,
Attorney General.

JAMES A. FOWLER,
Assistant to the Attorney General.

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In the District Court of the United States for the Northern District of Illinois.

UNITED STATES OF AMERICA, PETITIONER,
v.
BOARD OF TRADE OF THE CITY OF Chicago, and others, defendants.
} In equity.

To the honorable judges of the District Court of the United States for the Northern District of Illinois, sitting in equity:

Now comes the United States of America, by James H. Wilkerson, United States attorney for the Northern District of Illinois, acting under the direction of the Attorney General of the United States, and brings this, its proceeding by way of petition, against Board of Trade of the City of Chicago, Edward Andrew, president; Frank B. Rice, vice president; Albert E. Cross, second vice president; and J. E. Cunningham, David S. Lasier, Leslie F. Gates, John Carden, Robert McDougal, Joseph Simons, Adolph Gerstenberg, Benjamin S. Wilson, L. Harry Freeman, George B. Quinn, John A. Rogers, John R. Manff, and William L. Gregston, directors of Board of Trade of the City of Chicago. The full names of those defendants whose

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initials are given in whole or in part are unknown to petitioner.

Petitioner complains and alleges as follows:

That defendant Board of Trade of the City of Chicago is a body politic and corporate, created by special act of the Legislature of the State of Illinois approved February 18, 1859, with power and authority by that name to sue and be sued, implead and be impleaded, receive and hold property and effects, real and personal, by gift, devise, or purchase, and dispose of the same by sale, lease, or otherwise, and to make such rules, regulations, and by-laws from time to time as its members may think proper or necessary for the government of the corporation thereby created not contrary to the laws of the land.

That said act creating said defendant corporation further provides that said corporation shall have the right to admit and expel such persons as its members may see fit in the manner to be prescribed by the rules, regulations, and by-laws thereof.

That the objects of the said association, Board of Trade of the City of Chicago, as stated in its rules enacted pursuant to the provisions of said act of incorporation, are: To maintain a commercial exchange, to promote uniformity in the customs and usages of merchants, to inculcate principles of justice and equity in trade, to facilitate the speedy adjustment of business disputes, to acquire and disseminate valuable commercial and economic information, and generally to secure to its members the benefits of

cooperation in the furtherance of their legitimate pursuits.

That it is provided by said rules enacted pursuant to said act of incorporation that the government of said Board of Trade of the City of Chicago is vested in a president, two vice presidents, and fifteen directors, who, including the president and vice presidents, shall be known as the board of directors of said association; and that all of the business and financial concerns of the association are managed and conducted in accordance with the charter, rules, regulations, and by-laws of the association so made under the direction of said board of directors. That defendant, Edward Andrew, is president, Frank B. Rice is vice president, Albert E. Cross is second vice president, and defendants J. E. Cunningham, David S. Lasier, Leslie F. Gates, John Carden, Robert McDougal, Joseph Simons, Adolph Gerstenberg, Benjamin S. Wilson, L. Harry Freeman, George B. Quinn, John A. Rogers, John R. Manff, and William L. Gregston are directors of said Board of Trade of the City of Chicago.

That said rules of said association further provide for the admission to membership in said association of persons who are approved by the board of directors upon payment of an initiation fee of ten thousand dollars, or upon the presentation of an unimpaired or unforfeited membership duly transferred, and provided that as a condition to admission to membership in said association the person so applying signs an

agreement to abide by the rules, regulations, and by-laws of said association and all amendments that may be made thereto.

That said Board of Trade of the City of Chicago has established and maintains in said city of Chicago a commercial exchange for the buying and selling of grain and other commodities and for carrying on transactions connected with the purchase and sale thereof.

That there are more than fifteen hundred members of said association; that said membership consists both of those who buy and sell grain and other commodities on commission and of those who are actual purchasers and sellers thereof, and also of those who are members of firms and corporations engaged in dealing in grain and other commodities, both on commission and as actual purchasers and sellers thereof, and who, as members of said association, are bound in the conduct of the business of said firms and corporations with which they are connected, to observance of and compliance with the rules of said association. That by reason of the size of its membership and the large number of firms and corporations with which its members are connected, and which, by virtue of such connection, transact their business in accordance with the rules of said association, said Board of Trade has become and is a great commercial center for the transaction of business in wheat, corn, oats, rye, and other grain. That a large portion of said business is in grain purchased in States other than Illinois for

shipment to and delivery in Chicago, and in grain shipped from points in other States to Chicago for sale in the Chicago market; which said grain is an article of commerce among the States; and that a large part of the business transacted upon said exchange maintained by said Board of Trade of the City of Chicago is in connection with the purchase and sale and handling of such interstate shipments of grain.

That said Board of Trade of the City of Chicago, by reason of the number of its members and the great extent of the business carried on by said members and by the firms and corporations with which said members are connected, which, because of such membership, are subject to the rules of said Board of Trade, dominates and controls the market for grain, both as to amount sold and shipped in interstate commerce, and price thereof, throughout a large portion of the State of Illinois and the States adjoining it.

That a part of the business of the members of said Board of Trade and of the firms and corporations with which said members are connected consists in purchasing and dealing in grain throughout the territory tributary to Chicago, which includes the States of Wisconsin, Minnesota, Michigan, Illinois, Indiana, and other States, for shipment to and delivery at Chicago, and in purchasing and dealing in grain which has been shipped from points within said territory to Chicago and which is in transit to Chicago

upon the lines of the various carriers centering therein.

That in the dealings upon said Board of Trade transactions relating to said grain which has not yet reached the Chicago market are designated as transactions in grain "to arrive." That a large portion of said shipments of said grain to arrive is from points without the State of Illinois; and that said grain throughout the course of said transactions upon said Board of Trade with reference to it is the subject of commerce among the States; and that it is the practice and course of business among the members of said Board of Trade and the firms and corporations with which they are connected and who transact their business in accordance with its rules to make purchases of said grain to arrive prior to its shipment or while it is in transit to Chicago and to contract concerning the price which is to be paid for it upon its arrival at its destination at the Chicago market.

That with reference to transactions in said grain to arrive said Board of Trade has adopted for observance in the dealings of its members and of the firms and corporations with which its members are connected the following rule:

> SEC. 33. A. The board of directors is hereby empowered to establish a public "call" for corn, oats, wheat, and rye to arrive, to be held in the exchange room immediately after the close of the regular session of each business day.

B. Contracts may be made on the "call" only in such articles and upon such terms as have been approved by the "call" committee.

C. The "call" shall be under the control and management of a committee consisting of five members appointed by the president with the approval of the board of directors.

D. Final bids on the "call" less the regular commission charges for receiving and accounting for such property may be forwarded to dealers. It is the intent of this rule to provide for a public competitive market for the articles dealt in, and that with such market all making of new prices by members of this association shall cease until the next business day.

E. Any transaction of members of this association made with intent to evade the provisions of this rule shall be deemed uncommercial conduct, and upon conviction such member shall be suspended from the privileges of the association for such time as the board of directors may elect.

That said rule of said Board of Trade is now in force and effect and that all of the members of said Board of Trade have combined and are acting in concert to maintain and enforce said rule and are observing the same both in the transaction of their own business and in that of the firms and corporations with which they are connected and will continue so to do unless restrained by the injunction of this honorable court.

That the regular sessions of said Board of Trade upon business days are from nine-thirty o'clock a. m.

to one-fifteen o'clock p. m., with the exception of Saturday, and that the session upon Saturday is from nine-thirty o'clock a. m. to twelve o'clock m., and that said Board of Trade is closed upon Sundays and holidays.

That the purpose and intent of said Board of Trade and its members in the enactment of said rule, and in combining and acting in concert to maintain it, was and is to prevent all competition among the members of said Board of Trade and the firms and corporations with which said members are connected in dealings relating to corn, oats, wheat, and rye to arrive from the time of the public "call" immediately after the close of the regular session of each business day until the opening of the session of said Board of Trade upon the next business day, and to fix and control the prices to be offered and paid for said wheat, corn, oats, and rye to arrive, and thereby to restrain trade and commerce therein.

That said members of said Board of Trade have combined and conspired together and are combining and conspiring together to establish said public "call" and to maintain said rule with reference thereto as above set forth, and that the effect of said combination and conspiracy has been and is to fix and control during the periods between the regular sessions of said Board of Trade the prices to be offered and paid for wheat, corn, oats, and rye to arrive.

That said combination so to fix and control prices extends to the transactions and dealings of all of the

members of said Board of Trade and to all the firms and corporations with which said members are connected and that by reason of the large number of said members and their domination of the Chicago market the effect of said combination to observe and enforce said rule has been and is to fix and control arbitrarily during the time when said Board of Trade is not open for business, prices of said grain to arrive as above set forth; and that said combination extends not only to transactions in Chicago but to transactions throughout the entire country with respect to wheat, corn, oats, and rye to be received at Chicago and to be disposed of upon the Chicago market.

That said combination as prescribed by said rule and as above set forth is an absolute agreement to fix and control the prices of said wheat, corn, oats, and rye to arrive during the time when said Board of Trade is closed, and that but for said combination among the members of said Board of Trade, as evidenced by said rule, the members of said Board of Trade and the firms and corporations with which they are connected would, during the time between the sessions of said Board of Trade, compete with each other in fixing the prices to be paid for said wheat, corn, oats, and rye to arrive, and in sending out bids therefor, and that but for said rule and the observance thereof by the members of said Board of Trade the prices to be offered to be paid for said wheat, corn, oats, and rye to arrive would, during the time

when said Board of Trade is closed, be determined by competition.

That the regular sessions of said Board of Trade occupy only about one-half of the time ordinarily devoted to the carrying on of trade and commerce in said city of Chicago, and that the effect of the observation and maintenance of said rule is that during at least one-half of said time devoted to the carrying on of trade and commerce in said city of Chicago the prices for said wheat, corn, oats, and rye to arrive are arbitrarily determined, fixed, and controlled by said combination and agreement with reference to the prices to be offered and paid therefor.

That a large portion of said wheat, corn, oats, and rye to arrive with reference to which said rule above set forth is applied by the members of said Board of Trade and the firms and corporations to which they belong and which are covered by said rule and affected by its maintenance, consists of shipments of said wheat, corn, oats, and rye from points without the State of Illinois to said city of Chicago, and that said shipments are made and carried on over the lines of divers carriers through said northern district of Illinois, and that said combination as above set forth is a combination in restraint of interstate commerce in violation of the provisions of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies."

In consideration whereof, and inasmuch as adequate remedy in the premises can be obtained only in this

court, the United States of America prays this honorable court to order, adjudge, and decree that the combination and conspiracy hereinabove described is unlawful and that all of the acts done or to be done to carry it out are in violation of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies;" that said defendant, Board of Trade of the City of Chicago, and each and every member thereof, and each of the defendants to this petition may be perpetually enjoined from doing any act in pursuance of or for the purpose of carrying out said combination and conspiracy, and may be perpetually enjoined from entering into any combination or agreement fixing the bids which may be offered to dealers between the regular sessions of said Board of Trade for wheat, corn, oats, and rye to arrive, and may be perpetually enjoined from taking any steps for the enforcement of said rule of said Board of Trade above set forth, and that the petitioner may have such further relief as the nature of the case may require and the court may deem proper in the premises.

To the end, therefore, that the United States of America may obtain the relief to which it is justly entitled in the premises, may it please this honorable court to grant to it writs of subpœna directed to each and every one of defendants, commanding them and each of them to appear herein and answer, but not under oath, answer under oath being hereby expressly waived, the allegations contained in the foregoing petition, and to obey and perform such order

and decree as the court may make in the premise and upon the hearing hereof to permanently enjoi the defendants as hereinabove prayed, and pendin a final hearing of this case, cause a temporary re straining order to issue enjoining the defendants an each of them and each of their officers and agents and servants as hereinabove prayed.

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